Military Health System Uniform Business Office/Unified Biostatistical Utility 2005 Conference

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Collecting for Health Care Services From Third Party Payors

- 10 U.S.C. 1095
  - “Third party payor”
  - “Reasonable costs of health care services”
  - To the extent that the person will be eligible to receive reimbursement or indemnification from the third party payor
  - No exceptions based upon any provision of any insurance medical service or health plan contract excluding from coverage or limiting payment for charges

Third Party Payor

- An entity that provides insurance, medical service, or health plan
  - Includes auto liability and worker's compensation
  - Includes preferred provider organizations, Medicare Supplemental Insurance

Paying Military Health System Claims is a Legal Obligation

- Knowing failure to pay claims which you have a legal obligation to pay is a violation of Federal Law, including the False Claims Act.
- USA v. Highmark, 305 F.Supp. 2d 451 EDPa 2004

THE SECRETS OF CODING

In order to get paid by the health insurance programs, a physician must:

l) perform a covered service

2) on a beneficiary

3) which is medically necessary for diagnosis or treatment

4) submit a claim for payment(HCFA l500)

WHAT DO I NEED TO KNOW ABOUT CODING TO CREATE A LEGAL OBLIGATION TO PAY

- Coding shows:
  - l) what was done
  - 2) why it was done
  - 3) why it should be paid

TEN CODING PROBLEMS

- 1. "THE CLERK DID IT."
- 2. "THE LAST CLERK DID IT, AND LEFT A YELLOW STICKY ON THE MONITOR."
- 3. "THE COMPUTER (OR THE COMPUTER PROGRAM) DID IT."
- 4. "THE BILLING SERVICE DID IT."
- 5. "THE CONSULTANT SAID IT WAS OK TO BILL THIS WAY."

- 6. "THE CARRIER SAID IT WAS OK TO BILL THIS WAY."
- 7. "THE CODE WAS AMBIGUOUS."
- 8. "THE CODE IS NEW, AND THE CROSSWALK SAID TO DO THIS."
- 9. HCFA (The Inspector General) SAYS THE CODE IS CONFUSING. "It's right there in the preamble!”(published in the Federal Register in l983) Does "present” really mean you have to be there?"
- 10. "THE AMA SAYS ITS OK."

Coding Books You Need

- The CPT guidance from AMA
- The ICD guidance from AHA

HELP FOR BILLING AND CODING

- Listen to the insuror:
- Listen to medical and specialty societies:
- Listen to billing company recommendation
- Listen to colleagues and employees
- Check the websites
- Check the forms and instructions
- Ask for screen shots and rejection codes

Proving That the Failure to Pay Claims Was “Knowing”

- Notice of legal requirement
- Intentional failure to pay
- Reckless disregard of obligation
- Intentional ignorance of responsibility

Knowing Failure to Pay Can Result in

- Triple damages
- $5,000 per knowing refusal
- Debarment or exclusion for the insuror

SLOW PAY/NO PAY: DEALING WITH THE HEALTH PLAN THAT HAS NOT HONORED ITS OBLIGATION TO PAY

A) WHAT IS REALLY GOING ON IN FAILURE TO PAY?

- Incompetence
- computer systems/integration
- Edit systems from commercial software firms
- employee issues
- no return on investment in better claim systems

WHAT IS REALLY GOING ON IN FAILURE TO PAY (cont)

- hide and seek
- it’s our money-keep it by making it impossible to collect
- pushing out expensive patients by discouraging providers from taking care of them
- theft of services

B) WHAT LAWS CAN FAILURE TO PAY VIOLATE?

- State prompt payment laws
- implied covenant of good faith and fair dealing
- SEC disclosures (incurred but not reported)
- laws governing auditors' obligations
- contract terms
- insurance reporting requirements
- insurance processing requirements

WHAT LAWS CAN INTENTIONAL FAILURE TO PAY VIOLATE?

- l8 U.S.C. 1001-false entry in government record, false statement
- 31 U.S.C. 3729 et seq-false claim to the United States, or to Medicaid program
- l8 U.S.C. 666 - embezzling or obtaining funds from publicly-funded programs
- l8 U.S.C. 1341 - mail fraud

- l8 U.S.C. 1345 - mail, health care injunction statute
- 18 U.S.C. 1347 health care fraud scheme or artifice
- 18 U.S.C. 669 - theft or embezzlement in connection with health care conversion or misapplication of funds
- 18 U.S.C. 1035 - false statement relating to health care matters

State Prompt Payment Statutes and Enforcement Actions

- See AMA private sector advocacy website listing prompt payment enforcement by state
- Round up the usual suspects

Proving that Failure to Pay Claim was “Knowing”

- Explaining the obligation
- Communicating with the insuror
- Records of communication
- Records of meetings
- Correspondence and e-mails

Proof that Failure to Pay Claims was “Knowing”

- written records of conversation re claims-who, date, response
- record date of mailing of claims
- record date of receipt of request for more information
- record date of receipt of check
- confirm conversations by individual name
- keep envelopes with communications from problem insurors

- track problem insurors
- ask for meetings with senior health plan officials/ advance agenda/memorialize discussion
- ask about claims processing software
- pursue “lost claims” What happened?
- is there a VIP list for processing claims
- is interest paid
- how about holdbacks?

The opinions expressed in this handout are personal to the author, James Sheehan, and do not represent the official positions of the United States Department of Justice.